

## Message Text

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12

ACTION EB-07

INFO OCT-01 EUR-12 EA-07 ISO-00 STR-04 STRE-00 FEA-01  
AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00 FRB-03 H-01  
INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05  
CIEP-01 SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02  
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R 080640Z DEC 76

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 4051

INFO MTN DEL GENEVA 2063

USMISSION EC BRUSSELS

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PASS STR ELECTRONICALLY, PASS TREASURY FOR SUCHMAN, RAY  
FROM WOLFF FOR AMB DENT

E.O. 11652: N/A

TAGS: ETRD, JA, EC

SUBJECT: US-JAPAN CONSULTATIONS - MTN SUBSIDIES/TAX AGREEMENT

1. SUMMARY. U.S. OUTLINED PROBLEMS OF WITHHOLDING  
LIQUIDATION IN ZENITH CASE IF CUSTOMS COURT DECISION  
WENT AGAINST GOVERNMENT AND SUGGESTED AGREEMENT UNDER  
SECTION 102 OF THE TRADE ACT AS ONE POSSIBLE SOLUTION.  
GOJ NOTED SERIOUSNESS OF ISSUE AND WILL STUDY U.S. PROPOSAL.

2. U.S. (WOLFF) EXPLAINED TO JAPANESE THAT IT IS POSSIBLE  
THE CUSTOMS COURT COULD DECLARE AGAINST THE DEPARTMENT OF  
TREASURY DECISION IN THE ZENITH CASE UNDER U.S. COUNTER-  
VAILING DUTY LAW. IF THIS HAPPENS, WOLFF POINTED OUT, THE  
U.S. IS REQUIRED BY LAW TO SUSPEND LIQUIDATION OF IMPORTS  
COVERED IN THIS CASE, PENDING FINAL RESOLUTION OF THE  
MATTER IN THE COURTS. SIMILAR PETITIONS FOR COUNTER-  
VAILING DUTY ON PRODUCTS SUBJECT TO THE COMMODITY TAX OR  
REBATES OF OTHER INDIRECT TAXES (SUCH AS THE VAT) IN OTHER  
COUNTRIES WOULD LIKELY FOLLOW. SUCH ACTIONS COULD  
EVENTUALLY RESULT IN THE SUSPENSION OF LIQUIDATION ON  
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A LARGE AMOUNT OF U.S. IMPORTS FROM JAPAN.

3. WOLFF THEN EXPLAINED THAT MEANS OF SEEKING REMEDY PENDING A FINAL RESOLUTION OF THE CASE BY THE SUPREME COURT WOULD BE TO SUBMIT LEGISLATION TO CONGRESS THAT WOULD WAIVE THE SUSPENSION OF LIQUIDATION PENDING THE ULTIMATE DECISION IN THE COURTS. TWO WAYS OF SUBMITTING SUCH LEGISLATION WOULD BE (1) DIRECTLY AS A SEPARATE PIECE OF LEGISLATION IN WHICH CASE THE LEGISLATION WOULD BE SUBJECT TO AMENDMENT AND THE TIME DELAYS OF ORDINARY LEGISLATION OR (2) UNDER SECTION 102 OF THE TRADE ACT AS A NTM AGREEMENT IN WHICH CASE THE LEGISLATION COULD NOT BE AMENDED AND WOULD RECEIVE EXPEDITED ACTION WITHIN THE TIME CONSTRAINTS OF SECTION 102. WOLFF INDICATED THAT THE SECOND ALTERNATIVE OFFERED THE BEST POSSIBILITY FOR A SATISFACTORY SOLUTION AND OUTLINED THE ELEMENTS WHICH WOULD BE INCLUDED IN SUCH AN AGREEMENT:

(1) AN AGREEMENT TO NEGOTIATE ON TAX PRACTICES BOTH DIRECT AND INDIRECT IN MTN SUBSIDIES CODE OR REFLECTED IN SUCH A CODE, (2) NO ARTICLE 23 ACTIONS OR COUNTERVAILING ACTION AGAINST THE DISC OR SIMILAR PRACTICES (3) NO SUSPENSION OF LIQUIDATION PENDING ULTIMATE DECISION IN THE COURTS.

4. JAPANESE (SAITO, DIRECTOR SECOND NORTH AMERICA DIV, MFA) INDICATED STRONG INTEREST IN IDEA OF AGREEMENT BUT FEARED THAT ANY SUCH AGREEMENT WOULD BE CONSTRUED AS A CONFESSION OF GUILT WITH RESPECT TO INDIRECT TAXES (E.G. COMMODITY TAX) LEVIED BY THE JAPANESE. WOLFF EMPHASIZED THAT ANY SUCH AGREEMENT COULD BE WORDED SO AS TO AVOID INDICATING CONDEMNATION OF ANY PARTICULAR PRACTICES.

5. KAWASAKI (DIRECTOR, AMERICA-OCEANIA DIVISION, TRADE POLICY, MITI) REMINDED US THAT GATT PANEL HAD DECLARED DISC AND SIMILAR EUROPEAN PRACTICES TO BE ILLEGAL, AND HE BELIEVED THAT THEY SHOULD BE DEALT WITH OUTSIDE OF THE MTN. IT WAS, HE ADDED, UNREASONABLE TO TRY TO DRAW OTHER COUNTRIES INTO THIS PROBLEM. AS FAR AS JAPAN IS CONCERNED, NO JAPANESE TAXES WERE DECLARED ILLEGAL BY GATT. WOLFF POINTED OUT THAT PROBLEM IS MORE WIDESPREAD THAN FOUR CASES TAKEN UP BEFORE THE GATT PANEL AND THAT MOST COUNTRIES HAVE SOME OF DIRECT TAX PRACTICES THAT MIGHT BE CONSIDERED LIMITED OFFICIAL USE

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ILLEGAL WITHIN THE MEANING OF GATT ARTICLE XVI.

6. IN RESPONSE TO KAWASAKI'S QUESTION ABOUT AVAILABILITY OF TEMPORARY OR PRAGMATIC SOLUTION TO LIQUIDATION PROBLEM IN ZENITH CASE, WOLFF ANSWERED THAT THERE APPEAR TO BE NONE, AND THAT, SHOULD THE GOVERNMENT TRY TO STRETCH EXISTING LAW, IT WOULD MOST CERTAINLY BE CHALLENGED IN COURTS THEREBY MAKING IT EVEN MORE DIFFICULT TO OBTAIN

THE NECESSARY LEGISLATION.

7. WOLFF EXPLAINED THE IMMEDIACY OF THE PROBLEM, THE  
LIKELIHOOD OF A CUSTOMS COURT DECISION IN THE NEAR FUTURE  
AND THE PROCEDURES AND TIMING NECESSARY UNDER SECTION 102.  
KAWASAKI ASKED, IN VIEW OF THE IMMEDIACY OF THE PROBLEM,  
IF THE U.S. GOVERNMENT COULD CONVEY THE SERIOUSNESS  
WITH WHICH JAPANESE VIEW THE CASE TO THE CUSTOMS COURT.  
WOLFF AGREED TO ASK TREASURY AND JUSTICE TO LOOK INTO THE  
QUESTION BUT REPLIED THAT IT MIGHT BE TOO LATE AND THAT  
THE JAPANESE MIGHT WANT TO MAKE SUCH A PRESENTATION  
IN CONNECTION WITH APPEALS COURT CONSIDERATION OF CASE, IF  
NECESSARY.

8. JAPANESE ESTIMATED THAT APPROXIMATELY 70 ITEMS, WITH  
AN EXPORT VALUE EQUAL TO 1/3 OF TOTAL JAPANESE EXPORTS  
TO THE U.S. ARE SUBJECT TO THE COMMODITY TAX AND COULD BE  
ULTIMATELY AFFECTED BY PRECEDENT REPRESENTED BY ADVERSE  
COURT DECISION. SAITO SAID THAT POTENTIAL SERIOUSNESS  
OF PROBLEMS HAD BECOME APPARENT TO JAPANESE ONLY RECENTLY  
AND THAT, IN VIEW OF THE SERIOUSNESS INVOLVED, HE COULD  
NOT GIVE AN ANSWER TO THE U.S. PROPOSAL UNTIL AFTER THE GOJ  
HAD STUDIED THE PROBLEM AND ALTERNATIVES IN SOME DETAIL.  
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